

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE CHIEF)	WEDNESDAY, THE 8 TH
)	
JUSTICE MORAWETZ)	DAY OF DECEMBER, 2021

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

SALE PROCEDURES ORDER

THIS MOTION, made by McEwan Enterprises Inc. (the “**Applicant**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, was heard this day via videoconference.

ON READING the Applicant’s Amended Notice of Motion dated November 30, 2021, the affidavit of Dennis Mark McEwan sworn November 12, 2021 and the exhibits thereto, the Third Report of Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed monitor of the Applicant (the “**Monitor**”) dated November 24, 2021, the Affidavit of Jordan Robins sworn November 4, 2021, and the exhibits thereto, and such other materials filed in respect of this Motion, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and counsel for First Capital Holdings (Ontario) Corporation, and such other counsel as were present.

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SERVICE

1. THIS COURT ORDERS that the time for service of the materials filed in respect of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

CAPITALIZED TERMS

2. THIS COURT ORDERS that unless otherwise indicated or defined herein, capitalized terms used in this Order have the meaning given to them in the sale procedures attached as Schedule “A” to this Order (the “**Sale Procedures**”).

SALE PROCEDURES

3. THIS COURT ORDERS that the Sale Procedures be and are hereby approved and the Applicant be and is hereby authorized to implement the Sale Procedures, supervised by the Monitor. Each of the Applicant and the Monitor be and is hereby authorized to perform its obligations under and take such steps as it considers necessary or desirable in carrying out the Sale Procedures.

4. THIS COURT ORDERS that the Monitor and its affiliates, partners, directors, employees and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Procedures, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor in performing its obligations under the Sale Procedures (as determined by this Court).

5. THIS COURT ORDERS that, without limiting the generality of paragraph 3 of this Order, the Stalking Horse Fee set forth in the Sale Procedures be and is hereby approved, and shall become payable to 286Co by the Applicant in the event that the Applicant and the other Participating Bidder enter into a transaction agreement in respect of implementing such Participating Bidder’s Bid, prior to or concurrently with the implementation of such Bid.

6. THIS COURT ORDERS that, in connection with the Sale Procedures and pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the

Applicant and the Monitor are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale transaction (each, a "**Transaction**"). Each prospective purchaser, or bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall; (i) return all such information to the Applicant or the Monitor; or (ii) destroy all such information that is not electronically stored and, in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser in any Transaction shall be entitled to continue to use the personal information provided to it, and related to the property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Applicant or the Monitor, or ensure that all other personal information is destroyed. For greater certainty, this paragraph 6 shall not in any way limit or modify the obligations of First Capital Real Estate Investment Trust and First Capital Holdings (Ontario) Corporation pursuant to the Confidentiality and Non-Disclosure Agreement referred to in section 13 of the Sale Procedures.

7. THIS COURT ORDERS that the Applicant and the Monitor may from time to time apply to this Court for advice and directions in connection with the Sale Procedures or the implementation thereof.

EXTENSION OF THE STAY PERIOD

8. THIS COURT ORDERS that the Stay Period (as defined in the Amended and Restated Initial Order granted by this Court in these proceedings on October 7, 2021 (the "**Amended and Restated Initial Order**")) be and is hereby extended to and including 11:59 p.m. on December 22, 2021, and all other terms of the Amended and Restated Initial Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph.

MISCELLANEOUS

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule “A”

Sale Procedures

Sale Process Supervised by the Monitor

1. The sale process (the “**Sale Process**”) in respect of McEwan Enterprises Inc. (“**MEI**”) shall be supervised by Alvarez & Marsal Canada Inc. in its capacity as Court-appointed monitor of MEI (the “**Monitor**”) on the terms set forth herein.

Participating Bidders

2. The parties eligible to participate in the Sale Process are: (i) 2864785 Ontario Corp. (“**286Co**”) and (ii) First Capital Holdings (Ontario) Corporation (each, a “**Participating Bidder**”), and no other parties.

Defined Terms

3. All capitalized terms used but not otherwise defined herein have the meanings given to them in the purchase agreement dated September 27, 2021 between MEI and 286Co, as amended by the Amending Agreement dated November 12, 2021 between MEI and 286Co (the “**Purchase Agreement**”).

Bid Deadline

4. In order to participate in the Sale Process, a Participating Bidder must submit its offer (in each case, a “**Bid**”) to the Monitor (by email at gkarpel@alvarezandmarsal.com and jnevsky@alvarezandmarsal.com) by no later than 5:00 p.m. (Toronto time) on December 17, 2021 (the “**Bid Deadline**”).

Stalking Horse Bid

5. 286Co has agreed and confirmed that its Bid to be submitted pursuant to the Sale Process shall be on no less favourable terms and conditions (individually or in the aggregate) than the terms and conditions set forth in the Purchase Agreement, other than 286Co may amend the consideration to be provided to the Y&B Landlord under the Purchase Agreement, which Bid will serve as a stalking horse bid (the “**Stalking Horse Bid**”) for purposes of the Sale Process, provided that 286Co shall be entitled to a stalking horse break fee in an amount to be agreed with the Monitor and in any event no greater than \$390,000 (the “**Stalking Horse Fee**”).

Terms and Conditions of Bids

6. Any Bid submitted by a Participating Bidder may not be subject to any due diligence or financing conditions.
7. Any Bid submitted by a Participating Bidder must be executed by the Participating Bidder and irrevocable.

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8. Any Bid submitted by a Participating Bidder must be no less favourable than the Stalking Horse Bid and, in the case of First Capital Holdings (Ontario) Corporation, provide for payment of the Stalking Horse Fee in cash to 286Co.

Review of Bids

9. All Bids should reflect the Participating Bidder's best and final offer and the Participating Bidder should not assume that it will be given an opportunity to rebid, renegotiate, or improve any terms of its bid. Notwithstanding the foregoing, the Monitor shall have the discretion to review, analyze and seek clarification from the Participating Bidders in respect of their respective Bids.
10. All Bids must be accompanied by a bid letter, and include the following information:
 - a. *Purchase Price and Form of Consideration:* The Bid must provide for a fixed amount of consideration that is a single number and not a range of values and must be supported in the bid letter by: (i) a sources and uses table, and (ii) a description of the legal basis for the assumption of any obligations, accompanied by any required counterparty consents.
 - b. *Identity & Contact Information:* The identity of all parties sponsoring or participating in the Bid, including the names, titles and contact information of key individuals. If the Bid will be relying on external sources of financing, provide the contact information for each such source with whom financing arrangements can be discussed, and authorize the Monitor to have such discussions.
 - c. *Financing:* If the Bid is relying on external financing (debt and/or equity), the Bid must be accompanied by fully executed copies of commitment letters from parties evidencing the irrevocable commitment to invest or lend sufficient funds to complete the transaction. The Bid must confirm that such financing is not conditional upon completion of further due diligence.
 - d. *Conditionality:* The Bid should have no conditions to closing other than those in the definitive agreement and must not be subject to a financing or due diligence condition. The level of conditionality will be a material consideration in evaluating bids received.
 - e. *Approvals:* All regulatory and other approvals, including internal, board, credit committee or other approvals and consents must be obtained prior to submitting the Bid. The Bid must include a statement confirming that all consents and approvals necessary to permit the Participating Bidder to close the transaction have been obtained.
 - f. *Business Plan:* Provide details of any contemplated changes to the current terms and conditions of employment for employees, any contemplated changes to the current operations and/or locations of the business and details regarding the go-forward capital structure of the business.

- g. *Expected Timing of Closing*: The bid must include a description of the expected time frame to complete the transaction, including key milestones and any other relevant information which may influence the Participating Bidder's ability to consummate the transaction expeditiously and in accordance with the Bid.
 - h. *Expiration*: The bid must remain open for acceptance by MEI and be irrevocable until at least 10 days following the Bid Deadline, provided that if the Participating Bidder is selected as the successful bidder, the Bid will remain irrevocable until the earlier of the closing of the transaction and the termination of the purchase agreement in accordance with its terms.
11. The Monitor shall prepare a report to the Court in respect of the Bids received and provide its recommendation in respect of the best Bid, taking into account all relevant facts and considerations the Monitor considers appropriate, including, without limitation, structure, purchase price, conditions, timing, certainty of closing, and impact on, and support of, stakeholders.

Due Diligence

12. MEI, in consultation with the Monitor, will work in good faith to provide such reasonable additional due diligence as may be required by a Participating Bidder, acting reasonably, in order for such Participating Bidder to assess the value of MEI's business and submit a Bid in the Sale Process, and not for any other purposes, subject to any applicable confidentiality restrictions that MEI may be subject to.
13. For certainty, the Confidentiality and Non-Disclosure Agreement made between First Capital Real Estate Investment Trust, First Capital Holdings (Ontario) Corporation, and MEI dated November 11, 2021 shall apply in respect of information provided to First Capital Holdings (Ontario) Corporation pursuant to the Sale Process.

Reservation of Rights

14. MEI reserves all of its rights in its CCAA proceedings in all respects and shall not be required to accept or complete any Bid submitted under the Sale Process.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

Court File No. CV-21-00669445-00CL

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MCEWAN ENTERPRISES INC.

Applicant

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Proceeding commenced at Toronto

SALE PROCEDURES ORDER

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